IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.572 OF 2003
IN
SUMMARY SUIT NO.1416 OF 2003

Bimla Devi Sharma and others Plaintiff

versus

G.P.R.Gas Services Defendant

Ms.Snehal Paranjape i/by Cr.Bayley & Co. for plaintiff

None for defendant

CORAM : S.C.DHARMADHIKARI, J.

DATE : 13th June 2005

PC :

1. In Summary Suit filed on 3rd March 2003 the plaintiff took out a summons for judgement on 2nd July 2003. The plaintiff is the widow of deceased proprietor. Deceased was carrying on business in the name and style of M/s.Aasam Transport Service. He was a sole proprietor. he has claimed a decree on the basis of a written contract as evidenced by agreement dated 112th September 2000 and invoices as well as statement of account forwarded from time to time. The receipt whereof is duly acknowledged and the

amounts at the foot of it is acknowledged.

2. Ms.Paranjape seeks amendment to cure a formal defect in the prayer clause inasmuch as in the prayer clause inadvertently further interest is claimed on the sum of Rs.13,70,785.09 Ps. instead of the outstanding as on the date of the suit which is Rs.9,62,309.10 Ps.. The summons for judgement and plaint is sought to be amended and notice of the amendment has already been served on the defendant. Amendment granted. Amendment to be carried out within a period of one week.

3. The summons for judgement is also served on the defendant's advocate Mr.Chatuphale and defendant. Defendant and his advocate are absent. Affidavit of service proving service of the summons for judgement and the affidavit in support thereof taken on record and marked "X". This matter appeared before this Court on 6th June 2005 on which date a further notice was given to Mr.Chatuphale, learned advocate for the defendant and the matter was adjourned till today to enable Mr.Chatupale to appear and make appropriate submissions. Neither is any affidavit in reply filed, although the summons

for judgement is served more than a year back, nor is Mr.Chatupale present to argue the matter. There is no defence to the claim.

4. In the light of provisions of Order XXXVII of CPC the plaintiffs are entitled to apply for judgement in their favour. Even otherwise the suit is based on a written contract. The written contract Exhibit-A envisages that on the basis of invoices and lorry receipts, the plaintiff would be entitled to receive amounts and Ms.Paranjape invites my attention to the relevant clauses of the agreement (clauses 3, 11, 12 and 13). The short fall of vehicles/ trucks for transportation of lubricants was made good by the plaintiff for which bills have been raised. These bills are on the basis of lorry receipts issued by the plaintiff and duly acknowledged by Bharat Petroleum Corporation ltd. with whom the defendant had entered into a contract for transport of lubricants. The payment advises raised by BPCL in respect of deliveries together with the statement of total outstanding has been forwarded to the defendant from time to time. The invoices as well as statement of accounts are duly annexed to the plaint. It is categorically averred by the plaintiffs that the entire amount

due has not been forwarded. The defendant made some intermittent payments and those were duly reflected in the books of accounts and statements based upon them forwarded to the defendant. Ms.Paranjape submits that there was dispute about alleged deviation of one of the truck of defendant and a criminal writ petition was filed on criminal appellate side of this Court being Criminal Writ Petition No.150 of 2003. In the said criminal writ petition, a statement was made by the plaintiff's advocate that a summary suit is already filed in this Court. The issue of alleged illegal deviation raised in the criminal writ petition was sorted out by this Court by directing the defendant to deposit a sum of Rs.2.50 lakh in this Court. It is only on this condition that the custody of the truck was to be handed over by the plaintiff to defendant's representative. The amount of Rs.2.50 lakh was to stand to the credit of this summary suit. The defence of the defendant in the criminal writ petition was that they had also filed a suit for recovery of Rs.86,453.99 Ps. against plaintiff but it is pointed out that neither a copy of the plaint nor other papers in the said suit have been served till date. It is in the light of these averments that the present suit is filed as

a summary suit claiming a decree in the sum of Rs.13,70,785.09 Ps. as per particulars of claim (Exhibit-F) with further interest on the principal amount.

5. I am satisfied that the claim in the suit is maintainable under the procedure envisaged by Order XXXVII inasmuch as liquidated sum based on written contract is claimed in the present suit. The annexures to the plaint including statement of account would also form the basis inasmuch as amount outstanding at the foot thereof has duly been confirmed. There is no denial of the liability inasmuch as willingness to deposit a sum of Rs.2.50 lakh was expressed by the defendant, who had filed a criminal writ petition against plaintiff in this Court.

6. In the light of the aforesaid, there will be a decree as prayed. However, further interest shall be @ 12% p.a. on the sum of Rs.9,62,309.10 Ps.. The office to draw up a decree in these terms. The drawing up of decree is expedited. Refund of court fee and computation of advocate’s costs as per rules.

7. The affidavit proving service is marked as

"Exhibit-X-1". Original documents with list marked as "Exhibit-X-2". At this stage Ms.Paranjape states that Rs.2.50 lakh deposited in the Court be allowed to be withdrawn and due credit would be given for the said withdrawal by the plaintiff while drawing up the Decree. The defendants are not present to contest and/or oppose this claim. In the criminal writ petition this Court had clearly stated that the said amount was to stand to the credit of the suit, without prejudice to the rights and contentions of the defendants. Now, the Summons for Judgement is disposed off. Moreover, it was not contested by defendant. It would be open for the plaintiff to apply for withdrawal of Rs.2.50 lakh with interest accrued thereon and the Prothonotary and Senior Master to permit such withdrawal on production of certified copy of the order passed today. The withdrawal of the amount of Rs.2.50 lakh shall be duly noted and appropriate adjustments would be made while computing the amount under the decree. Copy of order of the criminal writ petition is placed on record and is marked as "Exhibit-X-3."

(S.C.DHARMADHIKARI, J.)